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Committee on the Peaceful
Uses of Outer Space

Questionnaire on possible legal issues with regard to aerospace objects: replies from member States

Note by the Secretariat

Addendum

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General responses 6

I. Introduction

1. At its thirty-eighth session, in 1995, the Committee on the Peaceful Uses of Outer Space agreed that the purpose of the questionnaire on possible legal issues with regard to aerospace objects, finalized at the thirty-fourth session of the Legal Subcommittee, was to seek the preliminary views of States members of the Committee on various issues relating to aerospace objects. The Committee also agreed that the replies to the questionnaire could provide a basis for the Legal Subcommittee to decide how it might continue its consideration of the related agenda item. The Committee further agreed that States members of the Committee should be invited to give their opinions on those matters.[1]

2. Information received from member States by 2 February 1998 is contained in the note by the Secretariat of 15 February 1996 (A/AC.105/635 and Add.1-5).

3. At its fortieth session, in 2001, the Legal Subcommittee endorsed the report of the Working Group on the item entitled "Matters relating to the definition and delimitation of outer space". The Working Group agreed that, as very few replies had been received, member States should be requested to consider submitting or updating replies to the questionnaire in the interest of making progress in the work on the subject (A/AC.105/763, annex II, para. 9).

4. The present document was prepared by the Secretariat on the basis of information received by 21 January 2002 from the following member States: Germany, Morocco and Turkey.

II. Replies received from member States

Question 1: Can an aerospace object be defined as an object which is capable both of travelling through outer space and using its aerodynamic properties to remain in airspace for a certain period of time?

Morocco

[Original: French]

The proposed definition of "aerospace object" could be considered, but supplementary information should be provided on the characteristics of the aerospace object so as to give it a legal definition consistent with international space

law. Moreover, the use of the term "aerospace object" could cause confusion with other commonly used terms, such as "aircraft", "spacecraft" or "space object". If the term "aerospace object" is to be used, it should be defined in relation to other terms found in international legal texts.

Turkey

[Original: English]

If the intention is to include all space transportation systems, such as missiles, rockets and space shuttles, as well as their payload, then the definition is a correct one. It also includes ballistic missiles, future hypersonic transportation systems and so on, which may not be the intention of the definition. Thus, more detailed information is needed.

Question 2: Does the regime applicable to the flight of aerospace objects differ according to whether it is located in airspace or outer space?

Morocco

[Original: French]

1. If the "aerospace object" is designed for exploration and use in outer space, it is logical to apply the provisions of space law, particularly aspects relating to liability in the event of damage.

2. If, however, the "aerospace object" is used for purposes connected with air traffic, international air traffic law could be applicable.

3. This duality of use could cause ambiguities and create conflicts in the application of legal texts in the event of an accident.

Turkey

[Original: English]

The legal requirements of aerospace objects in airspace and outer space should be different due to different environments and different operational considerations.

Question 3: Are there special procedures for aerospace objects, considering the diversity of their functional characteristics, the aerodynamic properties and space technologies used, and their design features, or should a single or unified regime be developed for such objects?

Morocco

[Original: French]

There are no special international procedures for aerospace objects. This is due to the limited use of this kind of vehicle. Nevertheless, a regime uniquely applicable

to aerospace objects should be established on the basis of existing treaties, particularly with regard to liability.

Turkey

[Original: English]

There are no special procedures for aerospace objects of different technical and functional characteristics. However, it should be possible to draft a single law for aerospace objects, without violating present air and space laws. As new vehicle types are developed, the procedure may be amended to include those new types as well.

Question 4: Are aerospace objects while in airspace considered aircraft, and while in outer space spacecraft, with all the legal consequences that follow therefrom, or does either air law or space law prevail during the flight of an aerospace craft, depending on the destination of such a flight?

Morocco

[Original: French]

In view of what has been said in the previous questions, space law should prevail in the case of an aerospace object, throughout its entire flight from take-off (from Earth or a platform) to arrival at its destination (placing in orbit or landing). Air law could apply if the object in question is used in another State's airspace.

Turkey

[Original: English]

An aerospace object shall be considered an aircraft while in airspace and shall be considered a space craft while in outer space.

Question 5: Are the take-off and landing phases specially distinguished in the regime for an aerospace object as involving a different degree of regulation from entry into airspace from outer space orbit and subsequent return to that orbit?

Morocco

[Original: French]

Given that take-off and landing are two distinct phases, special legal procedures should be foreseen in the regime applicable to aerospace objects, particularly for the landing phase, which can sometimes, for various reasons, give rise to damage, and especially if, during this phase, the aerospace object crosses the airspace of a State other than the one responsible for it. As for the take-off phase, the relevant State is the launching State, according to the prevailing definition.

Turkey

[Original: English]

The same rules shall apply in both cases.

Question 6: Are the norms of national and international air law applicable to an aerospace object of one State while it is in the airspace of another State?

Morocco

[Original: French]

Yes, the norms of national and international air law should apply if an aerospace object is in the airspace of another State (see question 4).

Turkey

[Original: English]

Yes, both national and international law shall be applicable when an aerospace object is in the airspace of another State. If there are too many differences in national laws of States, the international air laws may be amended to unify those rules and regulations to make the flight of an aerospace object possible while it is in the airspace of another State.

Question 7: Are there precedents with respect to the passage of aerospace objects after re-entry into the Earth's atmosphere and does international customary law exist with respect to such a passage?

Morocco

[Original: French]

There would appear to be a precedent (i.e. the Russian shuttle in 1988), but the paucity of information available makes it impossible to give a firm opinion on the subject. Nevertheless, measures based on existing treaties and conventions should be taken if an incident occurs.

Turkey

[Original: English]

To our knowledge there are no precedents and no customary law that exists and governs the re-entry of the aerospace object.

Question 8: Are there any national and/or international legal norms with respect to the passage of space objects after re-entry into the Earth's atmosphere?

Morocco

[Original: French]

Morocco has no national space legislation but the norms and provisions of national/international legislation governing the right of passage in a foreign State's airspace should be applied should the need arise.

Turkey

[Original: English]

As far as the relevant articles of the Turkish Civil Aviation Code and some national practices are concerned, space objects in airspace are subject to the same rules as aircraft and other flying objects. (Aviation traffic experts have to be consulted for more detailed and precise answers.) The relevant United Nations treaties and principles relating to various aspects of the issue should be considered.

Question 9: Are the rules concerning the registration of objects launched into outer space applicable to aerospace objects?

Morocco

[Original: French]

As its name implies, this Convention can apply only to this type of object.

Turkey

[Original: English]

Yes, rules for registration shall be applicable to aerospace objects.

General responses

Germany

[Original: English]

The Government of Germany informed the Secretary-General that it would not be updating its former reply to the questionnaire on aerospace objects.

Notes

[1] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/50/20), para. 117.